

REMARKS/ARGUMENTS

At the time of the Office Action dated July 10, 2008 (hereinafter, "Office Action"), claims 1-16 were pending in the present application. In the Office Action, all pending claims were rejected under 35 U.S.C. § 103(a). By this paper, claims 1, 5-6, 8-9, 13-14 and 16 are being amended. Claims 2-4 and 10-12 are being canceled.

Applicants respectfully respond to the Office Action.

A. Claims 1-2 and 9-10 Rejected Under 35 U.S.C. § 103(a)

Claims 1-2 and 9-10 stand rejected under 35 U.S.C. § 103(a) based on U.S. Patent No. 6,993,210 to Pine (hereinafter, "Pine") in view of U.S. Patent No. 5,742,037 to Scola et al. (hereinafter, "Scola"). Applicants respectfully request reconsideration in view of the above claim amendments and the following remarks.

The factual inquiries that are relevant in the determination of obviousness are determining the scope and contents of the prior art, ascertaining the differences between the prior art and the claims in issue, resolving the level of ordinary skill in the art, and evaluating evidence of secondary consideration. KSR Int'l Co. v. Teleflex Inc., 550 U.S. ___, 2007 U.S. LEXIS 4745, at **4-5 (2007) (citing Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18 (1966)). As the Board of Patent Appeals and Interferences has recently confirmed, "obviousness requires a suggestion of all limitations in a claim." In re Wada and Murphy, Appeal 2007-3733 (citing CFMT, Inc. v. Yieldup Intern. Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003)). Moreover, the analysis in support of an obviousness rejection "should be made explicit." KSR, 2007 U.S. LEXIS 4745, at **37. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." Id. (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Amended claim 1 recites:

In a graphical code reader, a method for concurrent image capture and decoding, comprising:

capturing a first image;
processing the first image by searching for a graphical code within the first image and attempting to decode the graphical code;
capturing a second image while the first image is being processed;
determining an estimated processing time p for processing at least some of the first image; and
determining an estimated capture time c for capturing the second image;
wherein the capturing of the second image starts $p - c$ time units after the processing of the first image starts.

The cited references do not disclose or suggest “determining an estimated processing time p ,” “determining an estimated capture time c ,” or starting “the capturing of the second image ... $p - c$ time units after the processing of the first image starts,” as recited in amended claim 1.

The Examiner correctly acknowledges that the claimed subject matter at issue is not disclosed or suggested by Pine or Scola. (*See* Office Action, page 5.) However, the Examiner asserts that it would have been obvious to modify the combination of Pine and Scola to include this claimed subject matter in view of the teachings of Thornton. (*See id.*) Applicants respectfully disagree.

As an initial point, Applicants respectfully submit that Thornton is not analogous prior art to the claimed subject matter at issue. Claim 1 relates to a “method for concurrent image capture and decoding” in “a graphical code reader.” Thornton does not have anything to do with a “graphical code reader,” or even “image capture” generally. Rather, Thornton relates to “managing the execution of batch jobs by delegating tasks to independent service providers responsive to requests for work.” (Thornton, col. 1, lines 9-11.) One having ordinary skill in the art would not have looked to Thornton for suggestions on how to improve the performance of a “graphical code reader.”

However, even assuming *arguendo* that Thornton is analogous prior art, the subject matter of claim 1 is not obvious in view of the combination of Pine, Scola and Thornton.

Thornton describes “a method of delegating tasks of a batch job for execution by service providers.” (Thornton, col. 9, lines 64-66.) Thornton describes a “job management apparatus 104”

that assigns a task to a service provider. Thornton states that “[t]he task assignment includes ... estimating the time ... for completing the task.” (Thornton, col. 10, lines 44-49.)

The Examiner states: “The image capture and image decoding are each considered tasks.” (Office Action, page 5.) This is an unreasonably broad interpretation of claim 1, which conflicts with the plain meaning of the claim language. Claim 1 does not merely recite the performance of generic “tasks.” Rather, claim 1 recites “capturing a first image,” “processing the first image,” and “capturing a second image.” It is not reasonably to interpret this very specific claim language as referring merely to “tasks.”

However, even assuming *arguendo* that “image capture and image decoding are ... tasks,” as asserted by the Examiner, Thornton still does not disclose or suggest the claimed subject matter at issue.

The method of amended claim 1 involves determining an estimate of the time required for a first task (i.e., “processing at least some of the first image”). This estimate may be referred to as p . The method of amended claim 1 also involves determining an estimate of the time required for a second task (i.e., “capturing the second image”). This estimate may be referred to as c . The method of amended claim 1 then involves starting the second task “ $p - c$ time units” after the first task begins.

At most, Thornton describes determining time estimates for completing tasks. However, at no point does Thornton describe that the time estimates for two different tasks are used to determine the relative scheduling of the tasks. Thornton certainly does not disclose or suggest determining an estimate of the time required for a first task (p), determining an estimate of the time required for a second (c), and then starting the second task “ $p - c$ time units” after the first task begins, as in claim 1. If the Examiner disagrees, Applicants respectfully request that the Examiner specifically identify the part of Thornton where this claimed subject matter is allegedly disclosed or suggested.

For at least the foregoing reasons, Applicants respectfully submit that amended claim 1 is allowable. Accordingly, Applicants respectfully request that the rejection of amended claim 1 be withdrawn.

Claim 9 has been amended to include subject matter that is similar to the subject matter discussed above in relation to claim 1. Accordingly, Applicants respectfully request that the rejection of claim 9 be withdrawn for at least the same reasons as those presented above in relation to claim 1.

Claims 2 and 10 have been canceled.

B. Claims 3-6, 8, 11-14 and 16 Rejected Under 35 U.S.C. § 103(a)

Claims 3-6, 8, 11-14 and 16 stand rejected under 35 U.S.C. § 103(a) based on Pine in view of Scola and further in view of U.S. Patent No. 7,197,749 to Thornton et al. (hereinafter, "Thornton").

Claims 5-6 and 8 depend from claim 1. Claims 13-14 and 16 depend from claim 9, which includes subject matter that is similar to the subject matter discussed above in relation to claim 1. Accordingly, Applicants respectfully request that the rejection of claims 5-6, 8, 13-14 and 16 be withdrawn for at least the same reasons as those presented above in relation to claim 1.

Claims 3-4 and 11-12 have been canceled.

C. Claims 7 and 15 Rejected Under 35 U.S.C. § 103(a)

Claims 7 and 15 stand rejected under 35 U.S.C. § 103(a) based on Pine, Scola and Thornton and further in view of U.S. Patent No. 5,473,741 to Neufelder (hereinafter "Neufelder"). Claim 7 depends from claim 1. Claim 15 depends from claim 9, which includes subject matter that is similar to the subject matter discussed above in relation to claim 1. Accordingly, Applicants respectfully request that the rejection of claims 7 and 15 be withdrawn for at least the same reasons as those presented above in relation to claim 1.

Appl. No. 10/776,449
Amdt. dated October 10, 2008
Reply to Office Action of July 10, 2008

D. Conclusion

Applicants respectfully assert that all pending claims are allowable over the cited references, and request that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,



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Date: October 10, 2008

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